

Exhibits and displays that are customized or personalized so as to have use or value only to a particular purchaser are subject to Service Occupation Tax and Service Use Tax. See 86 Ill. Adm. Code 140.101 et seq. (This is a GIL.)

May 4, 2005

Dear Xxxxx:

This letter is in response to your letter dated October 26, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We have a client who recently has, or soon will be, beginning business in your state. We are concerned which of our client's services are subject to sales tax.

Trade Show Exhibits

Our client designs and manufactures exhibits for trade shows and conventions as well as developing interactive multi-media marketing tools utilized in the exhibit to attract attendance and gather market data for their customer. The design and manufacturing is all performed at our client's facility in STATE. When the exhibit is completed it is generally shipped to a trade show. Very often the exhibit moves from one tradeshow to another throughout the country. The management of this activity is also performed by professionals at our client's location in STATE. The determination of which state sales tax to charge is based on whether and how the shipping is arranged. If our client arranges for shipping, they charge sales tax for the state where the exhibit is shipped. If the exhibit is picked up by the customer or by the customer's contract carrier, then STATE sales tax is charged since delivery occurred in STATE.

When an exhibit is shipped to a particular trade show, it is actually in the state for a week or less. The exhibit is assembled, the trade show is held over a two or three day period, the exhibit is dismantled, crated and shipped out. Unless the exhibit is going to

another trade show, it generally, but not always, is shipped back to our client's facility for storage. A separate storage fee is charged and STATE tax collected.

Our questions are: Assuming first use of a new exhibit occurs in your state and that the customer did not pick it up in STATE, is this sale subject to sales tax? Is there any exemption for property that is only intended to be in the state for a short period of time? If the exhibit was built, put into storage in STATE and then sent into your state would it be taxable?

Freight Charges

Our client passes along the freight charges for shipping the exhibit. They do this two different ways. First, they mark up the actual charges and separately state that amount on the invoice, which includes both cost and markup. Second, they separately state the actual cost and also separately show a 'check handling fee' for processing the payment on behalf of the customer.

Our question is: if freight charges are separately stated, are they subject to sales tax? This would affect both the original use and subsequent use when the exhibit is shipped back to your state for next year's trade show. If a 'check handling fee' is charged, is that subject to tax?

Traffic Management Fee

This fee is charged for the management and coordination of shipping. Often times exhibits come from show to show or pieces of exhibits meet up with other pieces to form a new exhibit orientation. This coordination is handled by our client's traffic management team, whose office is in STATE.

Our question is: Is this fee taxable if the exhibit is on its way to your state?

Pull & Prep

When a stored exhibit is going to be shipped to another trade show from our client's storage facility, the Company performs a process called 'pull & prep'. The crates are opened and the parts inspected, cleaned and repaired, as necessary. This process takes place in STATE and STATE tax is charged, as appropriate.

Show Services

This fee encompasses many things and is a service rendered both at the trade show site as well as in preparation for the tradeshow from our client's office in STATE. It includes dealing with the convention center personnel for whatever the customer may need at the exhibit. This would include insuring that telephone and electric lines are provided, that the exhibit area is cleaned, that security is provided for the exhibit, that food is ordered for the exhibit, that the crates are brought back to the exhibit at the end of the show. In addition the labor costs associated with the set up and dismantling of the exhibit are often, but not always, paid by our client and included on their invoice as a show service.

These services are billed one of three ways—a flat fee coordination fee based upon exhibit size, a cost + markup where the markup is presented as a 'check handling fee,' and a combination of both.

Our question is: Are the charges for providing this service taxable?

Multimedia Presentations and Custom Software

Our client often produces multimedia presentations and/or custom software. The use of these products can be related to a particular tradeshow exhibit, but can also be used as sales materials, as lobby displays, or any other application not associated with a tradeshow exhibit. The software usually takes the form of a video type game with prizes given away by the customer. Obviously, the game is designed to obtain marketing information. They also produce videos which run on a monitor, television, or large size video displays. These products are burned onto a DVD or CD and delivered to the show.

Our question is: Are the charges for either of these products subject to tax?

Graphics

Usually a booth includes graphic panels and/or logos which can be designed by another agency and just produced at our client's location in STATE, or they can be designed and produced in our client's plant in STATE.

On the second and successive uses of the exhibit, the customer often wants changes to the graphic panels and or logos on the exhibit. These graphic panels and or logos are attached with Velcro so they are easy to change. Changes involve new products, logos or slogans. These new graphic panels and or logos are generally produced and shipped to the trade show directly from our client's location in STATE.

Our question is: Are these graphics subject to tax?

Meetings and Events

Our client arranges/coordinates in total or in part meetings and events all around the world. This includes coming up with themes for the meeting or event, arranging for hotel rooms for the group, arranging for group meals, sightseeing trips and tours, arranging for entertainers for the group functions, arranging for favors or gifts for the attendees.

Most of these arrangements are made from our client's STATE office. However, at least one Company employee is at the meeting to make sure everything runs smoothly, make changes, answer questions, etc.

Our client is paid in two ways. First, they pass along the actual costs incurred and add a fee for the services. Second, they mark up the costs incurred and send a bill for the total.

Our opinion is that there would be no tax due on the first payment plan since the bill is for services plus a reimbursement of out of pocket costs. With respect to the second plan, our opinion is that our client is the Purchaser of the hotel rooms or meals and

should issue a resale certificate to the vendor and then charge sales tax on the marked up amount to their customer.

Our questions are: Do you agree with our analysis of the tax situation with regard to the payment plans? We know that many localities have various tourist taxes built in to hotel rates. Would our client have any obligation to collect an additional tax on the mark up charged?

Our final question is if these services were arranged in your state and these products were produced in your state would these be taxable?

I realize that there are a lot of issues in this letter, but our client has a multi- faceted business. If you require any additional information or clarification, please contact me.

DEPARTMENT'S RESPONSE:

We are answering your inquiry with the understanding that the exhibits and displays referred to in your letter are customized or personalized in such a way so as to have use or value only to a particular purchaser. Exhibits and displays that are customized or personalized so as to have use or value only to a particular purchaser are subject to Service Occupation Tax (35 ILCS 115/1 et seq.) and Service Use Tax (35 ILCS 110/1 et seq.). Persons who transfer tangible personal property as an incident to sales of service are deemed to be servicemen.

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code Part 140 for a description of the Service Occupation Tax and 86 Ill. Adm. Code Part 160 for a description of the Service Use Tax. Additional information and a wealth of knowledge regarding the Service Occupation Tax and the Service Use Tax, including their application in certain situations, may be found on the Department's internet website under the heading of "Legal Research." For example, see General Information Letter ST 03-0113-GIL.

To prevent actual or likely multi-state taxation, the Service Use Tax does not apply to the use of tangible personal property in this State, "that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state." See 35 ILCS 110/3-45(c).

In general, the tax liabilities of the fees referred to in your request depend upon which tax base the serviceman chooses to calculate his or her tax liability. Please see 86 Ill. Adm. Code Part 160.

For information regarding "shipping and handling" please see the Department's regulations at 86 Ill. Adm. Code 130.415. General information regarding the tax liability of computer software may be found at 86 Ill. Adm. Code 130.1935.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk